

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

FRANK L. SPATES,

Plaintiff,

v.

SGT. JARED SPARKS,

Defendant.

Case No. 23-CV-1597-JPS

**ORDER**

Plaintiff, a prisoner proceeding pro se, filed a complaint in the above captioned action, ECF No. 1, along with a motion for leave to proceed without prepaying the full filing fee, or to proceed *in forma pauperis*. ECF No. 2. On December 4, 2023, the Court ordered Plaintiff to pay \$258.27 as the initial partial filing fee on or before January 3, 2024. ECF No. 5. On January 18, 2024, the Court dismissed this case, denied his motion to proceed without prepayment of the filing fee, ECF No. 2, as moot, and entered judgment accordingly for Plaintiff's failure to pay the initial partial filing fee. ECF Nos. 7, 8. On January 24, 2024, Plaintiff filed a motion for reconsideration from the dismissal. ECF No. 9. This order grants the motion for reconsideration, vacates the dismissal order and judgment, reinstates this case, and screens Plaintiff's complaint.

**1. MOTION FOR RECONSIDERATION**

The Court will grant Plaintiff's motion for reconsideration and reinstate this case. Federal Rule of Civil Procedure 59(e) empowers a court to alter or amend a judgment on motion by a party. Fed. R. Civ. P. 59(e). A party may file a motion to alter or amend judgment "no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e). The party seeking

relief under this Rule must establish “a manifest error of law or present newly discovered evidence.” *Obrieht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). Whether to grant a motion to amend a judgment “is entrusted to the sound judgment of the district court,” *In re Prince*, 85 F.3d 314, 324 (7th Cir. 1996), but the movant must first “clearly establish” his right to relief, *Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1122 n.3 (7th Cir. 2001). A party may file a motion for relief from a judgment or order under certain circumstances that include “mistake, inadvertence, surprise, or excusable neglect,” or “any other reason that justifies relief.” Fed R. Civ. P. 60(b)(1), (6).

Here, Plaintiff submits evidence that he filled out a disbursement form on December 8, 2023, for the \$258.27 initial partial filing fee. ECF No. 9-1 at 1. Plaintiff also submits a January 2, 2024 trust account statement showing that \$258.27 was taken out of Plaintiff’s account for a check sent to the Clerk of Court United States District Court. *Id.* at 3. As such, it appears that Plaintiff took all necessary steps to timely pay his initial partial filing fee and to comply with the Court’s order. Plaintiff is currently incarcerated and has no independent ability to control payment of the initial partial filing fee outside of this process. Plaintiff will not be punished for someone else’s clerical error. The Court will accordingly grant Plaintiff’s motion for reconsideration, ECF No. 9; vacate its prior dismissal order and order denying the motion to proceed without prepayment of the filing fee as moot, ECF No. 7; vacate the judgment, ECF No. 8; and will reinstate this case.

## **2. MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE**

The Prison Litigation Reform Act (“PLRA”) applies to this case because Plaintiff was a prisoner when he filed his complaint. *See* 28 U.S.C.

§ 1915(h). The PLRA allows the Court to give a prisoner plaintiff the ability to proceed with his case without prepaying the civil case filing fee. *Id.* § 1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. § 1915(b)(1). He must then pay the balance of the \$350 filing fee over time, through deductions from his prisoner account. *Id.*

On December 4, 2023, the Court ordered Plaintiff to pay an initial partial filing fee of \$258.27. ECF No. 5. Plaintiff paid that fee; payment was docketed on February 1, 2024. The Court will grant Plaintiff's motion for leave to proceed without prepaying the filing fee. ECF No. 2. He must pay the remainder of the filing fee over time in the manner explained at the end of this Order.

### **3. SCREENING THE COMPLAINT**

#### **3.1 Federal Screening Standard**

Under the PLRA, the Court must screen complaints brought by prisoners seeking relief from a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint if the prisoner raises claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, the Court applies the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). A complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, accepted as true, to "state a claim

for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United States and that whoever deprived him of this right was acting under the color of state law. *D.S. v. E. Porter Cnty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). The Court construes pro se complaints liberally and holds them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

### **3.2 Plaintiff’s Allegations**

Plaintiff brings this action against Defendant Sgt. Sparks (“Sparks”) for refusing to get him medical attention. ECF No. 1 at 2. Plaintiff came out of his cell and was throwing up mucus and blood in a garbage can. *Id.* Plaintiff was told (presumably by Defendant Sparks) to go back into his cell. *Id.* Plaintiff came out of his cell again having chest pains and felt ill. *Id.* Plaintiff was refused medical attention and was again told to return to his cell. *Id.* Plaintiff went to HSU later that day and they kept him in short-term care. *Id.*

### **3.3 Analysis**

The Court finds that Plaintiff may proceed against Sparks on an Eighth Amendment deliberate indifference claim for his indifference to Plaintiff’s medical need. The Eighth Amendment secures an inmate’s right

to medical care. Prison officials violate this right when they “display deliberate indifference to serious medical needs of prisoners.” *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005) (internal quotation omitted). Deliberate indifference claims contain both an objective and a subjective component: the inmate “must first establish that his medical condition is objectively, ‘sufficiently serious,’; and second, that prison officials acted with a ‘sufficiently culpable state of mind,’ i.e., that they both knew of and disregarded an excessive risk to inmate health.” *Lewis v. McLean*, 864 F.3d 556, 562–63 (7th Cir. 2017) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal citations omitted)). “A delay in treating non-life-threatening but painful conditions may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate’s pain.” *Arnett v. Webster*, 658 F.3d 742, 753 (7th Cir. 2011) (citing *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010)). The length of delay that is tolerable “‘depends on the seriousness of the condition and the ease of providing treatment.’” *Id.* (quoting *McGowan*, 612 F.3d at 640).

Here, at the screening stage, the Court finds that Plaintiff’s allegations are sufficient to proceed against Sparks. Plaintiff alleges that he experienced chest pains and was throwing up mucus and blood, but that Sparks denied him medical attention. Although Plaintiff indicates that he was able to see HSU later that day, Spark’s delay in treatment may have caused Plaintiff unnecessary pain and suffering. As such, Plaintiff may proceed against Sparks on an Eighth Amendment deliberate indifference claim for his indifference to Plaintiff’s serious medical need. The Court notes that Plaintiff states in his claim for relief that “all officers involved” should be reprimanded and subject to the monetary award, ECF No. 1 at 4; however, Plaintiff has only named Sparks in this case. If Plaintiff wishes to

pursue claims against additional people, he must file an amended complaint.

#### **4. CONCLUSION**

In light of the foregoing, the Court finds that Plaintiff may proceed on the following claim pursuant to 28 U.S.C. § 1915A(b):

**Claim One:** Eighth Amendment claim against Sparks for his deliberate indifference to Plaintiff's serious medical need.

The Court has enclosed with this Order guides prepared by court staff to address common questions that arise in cases filed by prisoners. These guides are entitled, "Answers to Prisoner Litigants' Common Questions" and "Answers to Pro Se Litigants' Common Questions." They contain information that Plaintiff may find useful in prosecuting his case.

Defendant should take note that, within forty-five (45) days of service of this Order, he is to file a summary judgment motion that raises all exhaustion-related challenges. The Court will issue a scheduling order at a later date that embodies other relevant deadlines.

Accordingly,

**IT IS ORDERED** that Plaintiff's motion for reconsideration, ECF No. 9, be and the same is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that the order dismissing this case and denying the motion to proceed without prepayment of the filing fee, ECF No. 7, and the judgement, ECF No. 8, be and the same are hereby **VACATED**;

**IT IS FURTHER ORDERED** that the Clerk of Court reinstate this case for further proceedings;

**IT IS FURTHER ORDERED** that Plaintiff's motion for leave to proceed without prepaying the filing fee, ECF No. 2, be and the same is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that under an informal service agreement between the Wisconsin Department of Justice and this Court, a copy of the complaint and this Order have been electronically transmitted to the Wisconsin Department of Justice for service on **Defendant Sparks**;

**IT IS FURTHER ORDERED** that under the informal service agreement, Defendant shall file a responsive pleading to the complaint within sixty (60) days;

**IT IS FURTHER ORDERED** that Defendant raise any exhaustion-related challenges by filing a motion for summary judgment within forty-five (45) days of service;

**IT IS FURTHER ORDERED** if Defendant contemplates a motion to dismiss, the parties must meet and confer before the motion is filed. Defendant should take care to explain the reasons why they intend to move to dismiss the complaint, and Plaintiff should strongly consider filing an amended complaint. The Court expects this exercise in efficiency will obviate the need to file most motions to dismiss. Indeed, when the Court grants a motion to dismiss, it typically grants leave to amend unless it is "certain from the face of the complaint that any amendment would be futile or otherwise unwarranted." *Harris v. Meisner*, No. 20-2650, 2021 WL 5563942, at \*2 (7th Cir. Nov. 29, 2021) (quoting *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015)). Therefore, it is in both parties' interest to discuss the matter prior to motion submissions. Briefs in support of, or opposition to, motions to dismiss should cite no more than ten (10) cases per claim. No string citations will be

accepted. If Defendant files a motion to dismiss, Plaintiff is hereby warned that he must file a response, in accordance with Civil Local Rule 7 (E.D. Wis.), or he may be deemed to have waived any argument against dismissal and face dismissal of this matter with prejudice.

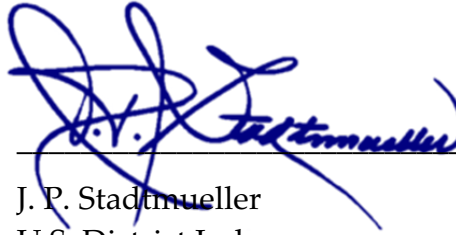
**IT IS FURTHER ORDERED** that the agency having custody of Plaintiff shall collect from his institution trust account the \$91.73 balance of the filing fee by collecting monthly payments from Plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to Plaintiff's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this case. If Plaintiff is transferred to another county, state, or federal institution, the transferring institution shall forward a copy of this Order along with his remaining balance to the receiving institution;

**IT IS FURTHER ORDERED** that a copy of this Order be sent to the officer in charge of the agency where Plaintiff is confined; and

**IT IS FURTHER ORDERED** that the Clerk's Office mail Plaintiff a copy of the guides entitled "Answers to Prisoner Litigants' Common Questions" and "Answers to Pro Se Litigants' Common Questions," along with this Order.

Dated at Milwaukee, Wisconsin, this 8th day of March, 2024.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "J. P. Stadtmueller", is written over a horizontal line.

J. P. Stadtmueller  
U.S. District Judge



Plaintiffs who are inmates at Prisoner E-Filing Program institutions shall submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the Court. Prisoner E-Filing is mandatory for all inmates at Columbia Correctional Institution, Dodge Correctional Institution, Green Bay Correctional Institution, Oshkosh Correctional Institution, Waupun Correctional Institution, and Wisconsin Secure Program Facility.

Plaintiffs who are inmates at all other prison facilities, or who have been released from custody, will be required to submit all correspondence and legal material to:

Office of the Clerk  
United States District Court  
Eastern District of Wisconsin  
362 United States Courthouse  
517 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202

**DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS.** If mail is received directly to the Court's chambers, **IT WILL BE RETURNED TO SENDER AND WILL NOT BE FILED IN THE CASE.**

Plaintiff is further advised that failure to timely file any brief, motion, response, or reply may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. **IF PLAINTIFF FAILS TO PROVIDE AN UPDATED ADDRESS TO THE COURT AND MAIL IS RETURNED TO THE COURT AS UNDELIVERABLE, THE COURT WILL DISMISS THIS ACTION WITHOUT PREJUDICE.**